

## **Item SPR05-25 Response Form**

**Title:** Criminal Cases: Change of Venue Proceedings (amend rules 4.150–4.154 and rule 4.162 and repeal rules 4.160 and 4.161 of the California Rules of Court)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **only if modified**
- ☐ **Do not agree** with proposed changes

Comments: \_\_\_\_\_

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\_\_\_\_\_

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

Please **write** or **fax** or **respond using the Internet** to:

**Address:** Ms. Romunda Price,  
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**Fax:** (415) 865-7664      **Attention:** Romunda Price  
**Internet:** [www.courtinfo.ca.gov/invitationstocomment](http://www.courtinfo.ca.gov/invitationstocomment)

<b>DEADLINE FOR COMMENT:</b> 5:00 p.m., Monday, June 20, 2005
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council, the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.  
All comments will become part of the public record of the council's action..*

## Invitation to Comment (SPR05-25)

Title	Criminal Cases: Change of Venue Proceedings (amend rules 4.150–4.154 and rule 4.162 and repeal rules 4.160 and 4.161 of the California Rules of Court)
Summary	This proposal would amend existing rules governing the change of venue in criminal cases to (1) clarify the responsibilities of the transferring court and receiving court and (2) set forth specific procedures when a change of venue has been granted.
Source	Criminal Law Advisory Committee
Staff	Joshua Weinstein, 415-865-7688, joshua.weinstein@jud.ca.gov
Discussion	<p>This proposal would amend the existing change of venue rules, setting forth the responsibilities of the transferring and receiving courts and specifying procedures after a change of venue motion has been granted. Under the proposed amendments, the case generally remains the responsibility of the transferring court, with limited procedures conducted in the receiving court. Specifically, the proposed amendments would:</p> <ul style="list-style-type: none"><li>• <b>Clarify that the case remains the responsibility of the transferring court.</b> Amended rule 4.150 would provide that when change of venue has been ordered, “the case remain as case of the transferring court.” (Proposed rule 4.150(b).) Therefore, absent good cause to the contrary, all proceedings other than trial are heard in the transferring court (including matters not heard by the trial judge, such as a challenge or disqualification of the trial judge, or Penal Code section 987.9 motions). The proposed amendments would also clarify which court of appeal is to review the case, both before and after verdict.</li><li>• <b>Update the style of rule 4.151 and incorporate rule 4.160(b).</b> Current rule 4.151, which describes the procedure for bringing a change of venue motion, has been stylistically updated and renumbered as subdivision (a). The language from current rule 4.160(a) and the advisory committee comment would be added in subdivision (b) and current rule 4.160 would be repealed.</li><li>• <b>Provide that administrative tasks and decisions are for the presiding judge (or his or her designee).</b> The amendments to rules 4.152 and 4.153 would provide that certain tasks are to be conducted by the presiding judge of the transferring court, or his or</li></ul>

## Invitation to Comment (SPR05-25)

her designee, because these tasks are administrative in nature. The presiding judge may delegate the tasks to the supervising judge of the criminal division, the judge hearing the change of venue motion, or any other appropriate judge.

- **Provide for procedures after change of venue has been ordered.** Amended rule 4.152 would set forth the steps for selecting the receiving court: (1) notification to the Administrative Director of the Courts of the change of venue; (2) determination of whether the transferring court has adequate resources to send a judge to try the case in the receiving court; and (3) if there are not adequate resources to send a judge to try the case in the receiving court, requesting that the Chief Justice assign a judge to the transferring court.
- **Set forth requirements for order on change of venue.** Amended rule 4.153 would provide that after receiving notification from the Administrative Director of the Courts, the presiding judge or his or her designee is to: (1) determine the court in which the case is to be tried; (2) transmit copies of the necessary portions of the record to the receiving court; and (3) enter the order on the record.
- **Clarify procedures in the receiving court.** Rule 4.154 sets forth the manner in which the trial is to be conducted and handling of the record.
- **Remaining provisions are incorporated into amended rules or renumbered.** Rule 4.160 would be repealed and its provisions would be incorporated into rules 4.151 and 4.153. Rule 4.162 would be updated to conform with current Judicial Council rules style and would be renumbered rule 4.155, to appear sequentially.

Rules 4.150–4.154 and rule 4.162 of the California Rules of Court are amended and rules 4.160 and 4.161 are repealed, effective January 1, 2006, to read:

## **Chapter 2. ~~Transfer and Change of Venue~~**

### **Rule 4.150. ~~Transfer of criminal actions or proceedings~~ Change of venue: application and general provisions**

- (a) **[Application]** Rules 4.150 to 4.154, ~~inclusive, shall~~ govern the ~~transfer of~~ change of venue in criminal actions or proceedings cases under Penal Code section 1033.
- (b) **[General provisions]** When a change of venue has been ordered, the case remains a case of the transferring court. Except upon good cause to the contrary, the court must follow the provisions below:
- (1) Proceedings before trial must be heard in the transferring court.
  - (2) Proceedings that are not to be heard by the trial judge must be heard in the transferring court.
  - (3) Postverdict proceedings, including sentencing, if any, must be heard in the transferring court.
- (c) **[Appellate review]** Review by the Court of Appeal, either by an original proceeding or by appeal, must be heard in the appellate district in which the transferring court is located.

#### **Advisory Committee Comment**

Subdivision (b)(1) is based on Penal Code section 1033(a), which provides that all proceedings before trial are to be heard in the transferring court, except when a particular proceeding must be heard by the trial judge.

Subdivision (b)(2) addresses motions heard by a judge other than the trial judge, such as requests for funds under Penal Code section 987.9 or a challenge or disqualification under Code of Civil Procedure section 170 et seq.

Reflecting the local community interest in the case, subdivision (b)(3) clarifies that after trial, the case is to return to the transferring court for any posttrial proceedings. There may be situations where the local interest is outweighed, warranting the receiving court to conduct posttrial hearings. Such hearings may include motions for new trial where juror testimony is necessary and the convenience to the jurors outweighs the desire to conduct the hearings in the transferring court.

1        Subdivision (c) ensures that posttrial appeals and writs are heard in the same appellate district as  
2 any writs that may have been heard before or during trial.

3  
4 **Rule 4.151. ~~Application and hearing~~ Motion for change of venue**

5  
6        **(a) [Motion procedure]** ~~Application~~ A motion for the transfer of change of venue  
7 in a criminal action or proceeding pursuant to case under Penal Code section  
8 1033 or 1034 of the Penal Code shall must be by notice of motion supported  
9 by affidavit or declaration filed with the court setting forth the facts upon  
10 which supporting the application is based. Except for good cause shown, the  
11 application shall motion must be filed at least 10 days prior to before the date  
12 set for trial, and with a copy shall be served upon the adverse party at least 10  
13 days prior to before the hearing on the application. At the hearing  
14 counteraffidavits may be filed.

15  
16        **(b) [Policy considerations in ruling on motion]** Before ordering a change of  
17 venue in a criminal case, the transferring court should consider impaneling a  
18 jury that would give the defendant a fair and impartial trial.

19  
20                                    **Advisory Committee Comment**

21  
22        Rule 4.151(b) is not intended to imply that the court should attempt to impanel a jury in every  
23 case before granting a change of venue.

24  
25  
26 **Rule 4.152. Selection of court and trial judge**

27  
28        When a judge grants a motion for change of venue, he or she must inform the  
29 presiding judge of the transferring court. The presiding judge, or his or her designee,  
30 must:

31  
32        **(a)** ~~When the court in which the action is pending determines that it should be~~  
33 ~~transferred pursuant to section 1033 or 1034 of the Penal Code, it shall advise~~  
34 Notify the Administrative Director of the Courts of the pending transfer  
35 change of venue. Upon being advised, After receiving the transferring court's  
36 notification, the Administrative Director shall, in order to expedite judicial  
37 business and equalize the work of the judges, must advise the transferring  
38 court which suggest a court or courts that would not be unduly burdened by  
39 the trial of the case. Thereafter, the court in which the case is pending shall  
40 transfer the case to a proper court as it determines to be in the interest of  
41 justice.

42  
43        **(b)** Select the judge to try the case, as follows:  
44

- 1           (1) The presiding judge, or his or her designee, must select a judge from the  
2 transferring court, unless he or she concludes that the transferring court  
3 does not have adequate judicial resources to try the case.  
4  
5           (2) If the presiding judge, or his or her designee, concludes that the  
6 transferring court does not have adequate judicial resources to try the  
7 case, he or she must request that the Chief Justice of California determine  
8 whether to assign a judge to the transferring court. If the Chief Justice  
9 determines not to assign a judge to the transferring court, the presiding  
10 judge, or his or her designee, must select a judge from the transferring  
11 court to try the case.  
12

13 **Rule 4.153. Order of transfer on change of venue**  
14

15 After receiving the list of courts from the Administrative Director of the Courts, the  
16 presiding judge, or his or her designee, must:  
17

- 18       (a) Determine the court in which the case is to be tried. In making that  
19 determination, the court must consider, under Penal Code section 1036.7,  
20 whether to move the jury rather than to move the pending action. In so doing,  
21 the court should give particular consideration to the convenience of the jurors.  
22  
23       (b) Transmit to the receiving court a certified copy of the order of transfer and any  
24 pleadings, documents, or other papers or exhibits necessary for trying the case.  
25  
26       (c) Enter the order of transfer shall be entered upon the for change of venue in the  
27 minutes of the transferring court or the docket and the clerk shall immediately  
28 make out and transmit to the court to which the action is transferred a certified  
29 copy of the order of transfer record, pleadings and proceedings in the action  
30 including the undertakings for the appearance of the defendant and of the  
31 witnesses. The order must include the determinations in (a).  
32

33 **Advisory Committee Comment**  
34

35 Rule 4.152 and 4.153 recognize that, although the determination of whether to grant a motion for  
36 change of venue is judicial in nature, the selection of the receiving court and the decision whether the case  
37 should be tried by a judge of the transferring court are more administrative in nature. Thus, the rule  
38 provides that the presiding judge of the transferring court is to make the latter decisions. He or she may  
39 delegate those decisions to the trial judge, the supervising judge of the criminal division, or any other  
40 judge the presiding judge deems appropriate. If, under the particular facts of the case, the latter decisions  
41 are both judicial and administrative, those decisions may be more properly made by the judge who heard  
42 the motion for change of venue.  
43

44 **Rule 4.154. Proceedings in the receiving court ~~receiving case~~**

1  
2 The receiving court to which the action is transferred shall must conduct the trial  
3 proceed as if the action case had been commenced in such the receiving court. If it  
4 is necessary to have any of the original pleadings or other papers before such the  
5 receiving court, the transferring court from which the action is transferred shall must  
6 at any time, upon application of the district attorney or the defendant, order transmit  
7 such papers or pleadings to be transmitted by the clerk, a certified copy thereof  
8 being retained. If, during the trial, any original papers or pleadings are submitted to  
9 the receiving court, the receiving court is to file the original. After sentencing, all  
10 original papers and pleadings are to be retained by the transferring court.  
11

12 **Rule 4.160. Policies to be considered before ordering and transferring a criminal**  
13 **case on change of venue**  
14

15 (a) ~~[Attempt to impanel jury]~~ Before ordering a change of venue in a criminal  
16 case, the court should consider impaneling a jury that would give the defendant  
17 a fair and impartial trial.  
18

19 (b) ~~[Moving the jury]~~ After a change of venue has been ordered, the court should  
20 determine, pursuant to Penal Code section 1036.7, whether it would be in the  
21 interests of the administration of justice to move the jury rather than to move  
22 the pending action. In so doing, the court should give particular consideration  
23 to the convenience of the jurors.  
24

25 **Advisory Committee Comment**  
26

27 Section 4(a) is not intended to imply that the court should attempt to impanel a jury in every case  
28 before granting a change of venue. If there is clear evidence of a reasonable likelihood that a fair and  
29 impartial trial cannot be had in the county, a change of venue should be ordered.  
30

31 **Rule 4.161. Change of venue case to be tried by judge from county in which the case**  
32 **originated—criminal cases**  
33

34 A criminal case in which a change of venue has been ordered should be tried in the  
35 court receiving the case by a judge from the court in which the case originated,  
36 unless the originating and receiving courts agree otherwise.  
37

38 **Rule 4.15562. Guidelines for reimbursement of costs in change of venue cases—**  
39 **criminal cases**  
40

41 (a) [General] Consistent with Penal Code section 1037(c), the county court in  
42 which an action originated ~~shall~~ must reimburse the county court receiving a  
43 case after an order for change of venue for any ordinary expenditure and any

1 extraordinary but reasonable-and-necessary expenditure ~~which~~ that would not  
2 have been incurred by the receiving ~~county~~ court but for the change of venue.

3  
4 **(b) [Reimbursable ordinary expenditures—court related]** Court-related  
5 reimbursable ordinary expenses include:

6  
7 (1) For prospective jurors on the panel from which the jury is selected and for  
8 the trial jurors and alternates seated:

9  
10 (i)(A) Normal juror per diem and mileage at the rates of the  
11 receiving ~~county~~ court. The cost of the juror should only be charged  
12 to a change of venue case if the juror was not used in any other case  
13 on the day that juror was excused from the change of venue case.

14  
15 (ii)(B) If jurors are sequestered, actual lodging, meals, mileage, and  
16 parking expenses up to state Board of Control limits.

17  
18 (iii)(C) If jurors are transported to a different courthouse or county,  
19 actual mileage and parking expenses.

20  
21 (2) For court reporters:

22  
23 (i)(A) The cost of pro tem reporters, even if not used on the change  
24 of venue trial, but not the salaries of regular official reporters who  
25 would have been paid in any event. The rate of compensation for pro  
26 tem reporters should be that of the receiving ~~county~~ court.

27  
28 (ii)(B) The cost of transcripts requested during trial and for any new  
29 trial or appeal, using the folio rate of the receiving ~~county~~ court.

30  
31 (iii)(C) The cost of additional reporters necessary to allow production  
32 of a daily or expedited transcript.

33  
34 (3) For assigned judges: The assigned judge's per diem, travel, and other  
35 expenses, up to state Board of Control limits, if the judge is assigned to  
36 the receiving court because of the change of venue case, regardless of  
37 whether the assigned judge is hearing the change of venue case.

38  
39 (4) For interpreters and translators:

40  
41 (i)(A) The cost of the services of interpreters and translators, not on  
42 the court staff, if those services are required under Evidence Code  
43 sections 750 through 754. Using the receiving ~~county~~ court's fee



1 schedule, this cost should be paid whether the services are used in a  
2 change of venue trial or to cover staff interpreters and translators  
3 assigned to the change of venue trial.  
4

5 (ii)(B) Interpreters' and translators' actual mileage, per diem and  
6 lodging expenses, if any, which were incurred in connection with the  
7 trial, up to state Board of Control limits.  
8

9 (5) For maintenance of evidence: The cost of handling, storing, or  
10 maintaining evidence beyond the expenses normally incurred by the  
11 receiving ~~county~~ court.  
12

13 (6) For services and supplies: The cost of services and supplies incurred only  
14 because of the change of venue trial, for example, copying and printing  
15 charges (e.g., juror questionnaires), long-distance telephone calls, and  
16 postage. A pro rata share of the costs of routine services and supplies  
17 should not be reimbursable.  
18

19 (7) For court or county employees:  
20

21 (i)(A) Overtime expenditures and compensatory time for staff  
22 incurred because of the change of venue case.  
23

24 (ii)(B) Salaries and benefit costs of extra help or temporary help  
25 incurred either because of the change of venue case or to replace  
26 staff assigned to the change of venue case.  
27

28 (c) **[Reimbursable ordinary expenses—defendant related]** Defendant-related  
29 reimbursable ordinary expenses include the actual costs incurred for guarding,  
30 keeping, and transporting the defendant, including:  
31

32 (1) Expenses related to health care: Costs incurred by or on behalf of the  
33 defendant such as doctors, hospital expenses, medicines, therapists, and  
34 counseling for diagnosis, evaluation, and treatment.  
35

36 (2) Cost of food and special clothing for an in-custody defendant.  
37

38 (3) Transportation: Nonroutine expenses, such as transporting an in-custody  
39 defendant from the ~~originating county~~ transferring court to the receiving  
40 ~~county~~ court. Routine transportation expenses if defendant is transported  
41 by usual means used for other receiving ~~county~~ court prisoners should not  
42 be reimbursable.  
43

1 (d) **[Reimbursable ordinary expenditures—defense expenses]** Reimbursable  
2 ordinary expenses related to providing defense for the defendant include:

3  
4 (1) Matters covered by Penal Code section 987.9 as determined by the  
5 transferring court in which the action originated or by a judge designated  
6 under that section.

7  
8 (2) Payment of other defense costs in accordance with policies of the ~~county~~  
9 court in which the action originated, unless good cause to the contrary is  
10 shown to the trial court.

11  
12 (3) Unless Penal Code section 987.9 applies, the ~~trial~~ receiving court ~~in the~~  
13 ~~receiving county~~ may, in its sound discretion, approve all trial-related  
14 expenses including:

15  
16 (i)(A) Attorney fees for defense counsel and, if any, co-counsel,  
17 and actual travel-related expenses, up to state Board of Control  
18 limits, for staying in the ~~receiving~~ county of the receiving court  
19 during trial and hearings.

20  
21 (ii)(B) Paralegal and extraordinary secretarial or office expenditures  
22 of defense counsel.

23  
24 (iii)(C) Expert witness costs and expenses.

25  
26 (iv)(D) The cost of experts assisting in preparation before trial or  
27 during trial, for example, persons preparing demonstrative evidence.

28  
29 (v)(E) Investigator expenses.

30  
31 (vi)(F) Defense witness expenses, including reasonable-and-  
32 necessary witness fees and travel expenses.

33  
34 (e) **[Extraordinary but reasonable-and-necessary expenses]** Except in  
35 emergencies or unless it is impracticable to do so, a receiving ~~county~~ court  
36 should give notice before incurring any extraordinary expenditures to the  
37 county in which the action originated, in accordance with Penal Code section  
38 1037(d). Extraordinary but reasonable-and-necessary expenditures include:

39  
40 (1) Security-related expenditures: The cost of extra security precautions taken  
41 because of the risk of escape or suicide or threats of, or the potential for,  
42 violence during the trial. These precautions might include, for example,  
43 extra bailiffs or correctional officers, special transportation to the

1 courthouse for trial, television monitoring, and security checks of those  
2 entering the courtroom.

- 3
- 4 (2) Facility remodeling or modification: Alterations to buildings or  
5 courtrooms to accommodate the change of venue case.
- 6
- 7 (3) Renting or leasing of space or equipment: Renting or leasing of space for  
8 courtrooms, offices, and other facilities, or equipment to accommodate  
9 the change of venue case.

10

11 (f) **[Nonreimbursable expenses]** Nonreimbursable expenses include:

12

- 13 (1) Normal operating expenses including the overhead of the receiving  
14 county court, for example:

15

16 (i)(A) Salary and benefits of existing county or court staff ~~which~~  
17 that would have been paid even if there were no change of venue  
18 case.

19

20 (ii)(B) The cost of operating the jail, for example, detention staff  
21 costs, normal inmate clothing, utility costs, overhead costs, and jail  
22 construction costs.

23

24 These expenditures would have been incurred whether or not the  
25 case was transferred to the receiving county court. It is, therefore,  
26 inappropriate to seek reimbursement from the county in which the  
27 action originated transferring court.

28

- 29 (2) Equipment ~~which that~~ is purchased and then kept by the receiving county  
30 court and which can be used for other purposes or cases.
- 31

32 (g) **[Miscellaneous]**

33

- 34 (1) Documentation of costs: No expense should be submitted for  
35 reimbursement without supporting documentation, such as a claim,  
36 invoice, bill, statement, or time sheet. In unusual circumstances, a  
37 declaration under penalty of perjury may be necessary. The declaration  
38 should describe the cost and state it was incurred because of the change of  
39 venue case. Any required court order or approval of costs also should be  
40 sent to the originating transferring court.
- 41

- 42 (2) Timing of reimbursement: Unless both counties courts agree to other  
43 terms, reimbursement of all expenses ~~which that~~ are not questioned by the

1 ~~originating county~~ transferring court should be made within 60 days of  
2 receipt of the claim for reimbursement. Payment of disputed amounts  
3 should be made within 60 days of the resolution of the dispute.